

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

HAROLD DAMPER

PETITIONER

vs.

CIVIL CASE NO. 2:02-cv-28-KS
CRIMINAL CASE NO. 2:98-cr-5-KS

UNITED STATES OF AMERICA

RESPONDENT

ORDER DENYING PETITION TO REOPEN HABEAS PROCEEDINGS
PURSUANT TO FED. R. CIV. P. 60(b)(1) and 60(b)(6)

BEFORE THE COURT on Motion to Reopen a Habeas Petition that was previously denied by this Court on July 11, 2006. The basis for reopening the prior action is Fed. R. Civ. P. 60(b)(1) and (6). While Petitioner alleges a violation of Rule 60(b)(1) there is no argument presented and the claim under 60(b)(1) has apparently been abandoned.

The justification for relief under Rule 60(b)(6) is that there has been a change in intervening law that would justify the Court reopening a Petition that was denied twelve years ago. Petitioner objects to the sentencing judge using the other relevant conduct involved in a Count that he was acquitted for. He takes the position that the case of *Nelson v. Colorado*, 137 S. Ct. 1249 (2017), is a change in the law that justifies his being allowed to proceed under Rule 60(b)(6). *Nelson* stands for the proposition that once the defendant was acquitted that he is entitled to have refunded fees and costs including restitution that was paid in connection with the vacated conviction. The case before the Court is distinguishable in that the sentencing judge used other relevant conduct in determining the total offense level, and this is allowed by previous

and current law. It makes no difference that the defendant was acquitted on one count. The Court heard proof of other relevant conduct encompassed in the acquitted count and used it in sentencing. The Court finds that there is no justification to reopen the prior petition and finds that the petition herein should be and is hereby DENIED.

SO ORDERED this the 21st day of March, 2018.

s/Keith Starrett
UNITED STATES DISTRICT JUDGE